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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,229	11/20/2003	James C. Chen	TUC920030144US1	2211
35825 7590 12/22/2008 LAW FIRM OF DAN SHIFRIN 6208 Devinney Circle ARVADA, CO 80004				
EXAMINER JEAN GILLES, JUDE				
ART UNIT 2443		PAPER NUMBER		
NOTIFICATION DATE 12/22/2008		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DAN-SHIFRIN@COMCAST.NET

### Office Action Summary

**Application No.**

10/719,229

**Applicant(s)**

CHEN ET AL.

**Examiner**

JUDE J. JEAN GILLES

**Art Unit**

2443

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-26 is/are allowed.
- 6) ☒ Claim(s) 27-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. This Office Action is in Reply to communication filed on 11/20/2003.

***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claim 27 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

**Regarding claim 27:** Claim 27 recites the steps of *"A computer program product of a computer readable medium usable with a programmable computer, the computer program product having computer-readable code embodied therein for transferring data in a PPRC environment, the computer-readable code comprising instructions for: pre-allocating at least a first payload buffer in a secondary storage control unit; pre-allocating at least a first data buffer in the secondary storage control unit; issuing a first write command for the transfer of a first block of data from a primary storage control unit to the secondary storage control unit; packaging write control information with a fibre channel protocol (FCP) command within a first extended command descriptor block (CDB); transmitting the first extended CDB from the primary storage control unit to the secondary storage control unit; and transmitting the first block of data from the primary storage control unit to the secondary storage control unit."*

These steps fail to definitely recite a hardware executing the computer software, rendering the claim as recited only an abstract idea. The claim equates merely to a

computer code or concept per se since "A computer program product of a computer readable medium usable with a programmable computer..." in the context of the claimed invention are interpreted by the Examiner to represent computer code or concept with intended use with a computer hardware, but not software or code actually stored in a computer hardware storage medium, which does not have a practical application or tangible result.

**Regarding claims 28-35:** Claims 28-35 are also nonstatutory. The dependent claims 7-35 are nonstatutory because of the reason mention for the rejection of the base claim 27.

Appropriate correction is required. The above noticed problems are just exemplary. Applicant is required to totally check the application for error and correct the same.

#### ***Allowed claims***

4. Claims 1-26 are allowed. The following is an examiner's statement of reasons for allowance: The Closest prior art of record, Milillo et al US 6643671 B2 Does not disclose the details of "a method/system for transferring data in a PPRC environment that comprises pre-allocating at least a first payload buffer in a secondary storage control unit; pre-allocating at least a first data buffer in the secondary storage control unit; issuing a first write command for the transfer of a first block of data from a primary storage control unit to the secondary storage control unit; packaging write control information with a fibre channel protocol (FCP) command within a first extended command descriptor block (CDB); transmitting the first extended CDB from the primary

*storage control unit to the secondary storage control unit; and transmitting the first block of data from the primary storage control unit to the secondary storage control unit."* In combination with all the elements of each independent claim as argued by Applicant (see the enabling portions of Applicant's specification, pages 2-5). So as indicated by the above statements, claims 1-26 have been considered allowable, in light of the claim limitations as well as the enabling portions of the specification.

5. The dependent claims further limit the independent claims and are considered allowable on the same basis as the independent claims as well as for the further limitations set forth.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

5. ***This action is made Non-Final.*** Any inquiry concerning this communication or earlier communications from examiner should be directed to Jude Jean-Gilles whose telephone number is (571) 272-3914. The examiner can normally be reached on Monday- Friday from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tonia Dollinger, can be reached on (571) 272-4170. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-3301.

Art Unit: 2443

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-0800.

/Jude J Jean-Gilles/

Examiner, Art Unit 2443

JJG

December 14, 2008